



DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2019-0063; Notice 2]

General Motors, LLC, Denial of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Denial of petition.

SUMMARY: General Motors, LLC, (GM) has determined that certain model year (MY) 2010–2017 GMC Terrain motor vehicles do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 108, *Lamps, Reflective Devices, and Associated Equipment*. GM filed a noncompliance report dated May 15, 2019. GM subsequently petitioned NHTSA on June 7, 2019, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces the denial of GM’s petition.

FOR FURTHER INFORMATION CONTACT: Leroy Angeles, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366-5304, leroy.angeles@dot.gov.

SUPPLEMENTARY INFORMATION:

I. Overview: GM has determined that certain MY 2010–2017 GMC Terrain motor vehicles do not fully comply with paragraph S10.15.6 and Table XIX of FMVSS No. 108, *Lamps, Reflective Devices, and Associated Equipment* (49 CFR 571.108). GM filed a noncompliance report dated May 15, 2019, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. GM subsequently petitioned NHTSA on June 7, 2019, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C.

30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance*.

Notice of receipt of GM's petition was published with a 30-day public comment period, on February 12, 2020, in the **Federal Register** (85 FR 8095). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) website at <https://www.regulations.gov/>. Then follow the online search instructions to locate docket number "NHTSA-2019-0063."

II. Equipment and Vehicles Involved: Approximately 726,959 MY 2010–2017 GMC Terrain motor vehicles manufactured between May 21, 2009, and July 13, 2017, are potentially involved.

III. Noncompliance: GM explains that the noncompliance is that the subject vehicles are equipped with lower beam headlamps that do not meet the photometry requirements of paragraph S10.15.6 and Table XIX of FMVSS No. 108. Specifically, a reflection from the headlamps' housing is directed 80 degrees outboard and 45 degrees upward, as measured from each lamp's optical axis, which illuminates two small areas high above the vehicle. When tested by GM, this reflection from a single point on each lamp measured approximately 450-470 candela (cd). This is more than three times brighter than the designated maximum of 125 cd at test points 10°U to 90°U, as stated in Table XIX-a.

IV. Rule Requirements: Paragraph S10.15.6 and Table XIX of FMVSS No. 108 include the requirements relevant to this petition. Each replaceable bulb headlamp must be designed to conform to the photometry requirements of Table XVIII for upper beam and Table XIX for lower beam as specified in Table II-d for the specific headlamp unit and aiming method when tested according to the procedure of paragraph S14.2.5 using any replaceable light source designated for use in the system under test.

V. Summary of GM's Petition: The following views and arguments presented in this section, "V. Summary of GM's Petition," are the views and arguments provided by GM and do not

reflect the views of the Agency. GM described the subject noncompliance and contends that the noncompliance is inconsequential as it relates to motor vehicle safety.

In support of its petition, GM submitted the following reasoning:

1. **The noncompliance caused by this reflection has no effect on vehicle safety for oncoming or surrounding vehicles.** The narrow reflection in question does not create a safety risk for oncoming or surrounding drivers, due to the extreme angle of the reflection. This angle, 80 degrees outboard and 45 degrees upward from each lamp's optical axis, is far above the range where the reflection could cause glare for oncoming or surrounding drivers, including the industry-recognized "glare points" referenced in Table XIX of FMVSS No. 108 at the following ranges: 0.5°U–1.5°L to L, 1°U–1.5°L to L, 0.5°U–1°R to R, 1.5°U–°R to R.
2. **The noncompliance caused by this reflection has no effect on vehicle safety for drivers of the subject vehicles.** The areas illuminated by the narrow reflections in question are not visible to drivers of the subject vehicles. These two small areas appear high above the vehicle, one to the far left and the other to the far right of the vehicle, well outside of the driver's view.

GM says, while these reflections may be somewhat perceptible in certain extremely dense fog or snow conditions, there would be no effect on vehicle safety due to the small size and far outboard location in the driver's peripheral field of view. GM claims that any detectable light due to such reflection would be negligible compared to other outside sources of illumination such as glare from oncoming traffic or fog glare forward of the vehicle.

3. **GM is aware of only a single customer inquiry associated with this condition and is not aware of any crashes or injuries.** GM reviewed all relevant field data and found just a single customer inquiry within the US and Canadian

vehicle population of nearly 820,000 vehicles sold, 726,595 of which were sold in the US and 92,747 were sold in Canada, over eight model years. The customer stated, “Left head lamp seems to have a portion of the light that shines up in the trees at near a 45-degree angle.” GM identified no other related field reports, including in warranty, Transportation Recall Enhancement, Accountability and Documentation (TREAD), Vehicle Owner Questionnaire (VOQ), and legal data.

4. **GM claims that the headlamps comply with recognized industry standards.**

GM cited S6.1.1 of the SAE International Standard J1383, *Performance Requirements for Motor Vehicle Headlamps* (May 26, 2010), which sets forth certain industry-recognized intensity and size limits on headlamp photometrics. Specifically, for a zone extending 20° left to 20° right, and 10° to 60° up from the lamp optical axis, the light projected cannot exceed 550 candelas and cannot occupy more than five percent of the zone’s total area. The reflection from the subject lamps is well outside of this zone. Even if the reflections were within this zone, the headlamps would remain compliant, as the reflection would not exceed the maximum of five percent of the total area or the maximum of 550 candelas.

5. **According to GM, the headlamps comply with applicable requirements for global regions, including UNECE R1123.**

S6.2.4 and Annex 3, Figure B of UNECE R112 specify photometric test points for the passing beam (i.e., lower beam headlamp). The photometric points extend to 4° above the lamp optical axis. The subject reflection is well above those test points.

6. **The subject condition has been corrected for service parts and does not affect current-generation vehicles.**

GM is purging all affected service and replacement headlamps from dealer stock. The supplier, Stanley, has redesigned service and replacement headlamps to eliminate the reflections that cause the issue by adding

graining to specific portions of the reflector. At the time of the original submission, GM projected the redesigned lamps would be available on June 12, 2019. Current-generation GMC Terrain vehicles (model years 2018 and newer) use a different headlamp design and are not affected by this condition.

GM concluded that the subject noncompliance is inconsequential as it relates to motor vehicle safety and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

VI. NHTSA's Analysis: The burden of establishing the inconsequentiality of a failure to comply with a *performance requirement* in a standard—as opposed to a *labeling requirement*—is more substantial and difficult to meet. Accordingly, the Agency has not found many such noncompliances inconsequential.¹ Potential performance failures of safety-critical equipment, like seat belts or air bags, are rarely deemed inconsequential.

An important issue to consider in determining inconsequentiality is the safety risk to individuals who experience the type of event against which the recall would otherwise protect.² The Safety Act is preventive, and manufacturers cannot and should not wait for deaths or injuries to occur in their vehicles before they carry out a recall. *See, e.g., United States v. Gen. Motors Corp.*, 565 F.2d 754, 759 (D.C. Cir. 1977). Indeed, the very purpose of a recall is to protect individuals from risk. *See id.*

NHTSA does not consider the absence of complaints or injuries to show that the issue is inconsequential to safety. “Most importantly, the absence of a complaint does not mean there

¹ Cf. *Gen. Motors Corporation; Ruling on Petition for Determination of Inconsequential Noncompliance*, 69 FR 19897, 19899 (Apr. 14, 2004) (citing prior cases where noncompliance was expected to be imperceptible, or nearly so, to vehicle occupants or approaching drivers).

² *See Gen. Motors, LLC; Grant of Petition for Decision of Inconsequential Noncompliance*, 78 FR 35355 (June 12, 2013) (finding noncompliance had no effect on occupant safety because it had no effect on the proper operation of the occupant classification system and the correct deployment of an air bag); *Osram Sylvania Prods. Inc.; Grant of Petition for Decision of Inconsequential Noncompliance*, 78 FR 46000 (July 30, 2013) (finding occupant using noncompliant light source would not be exposed to significantly greater risk than occupant using similar compliant light source).

have not been any safety issues, nor does it mean that there will not be safety issues in the future.”³ “[T]he fact that in past reported cases good luck and swift reaction have prevented many serious injuries does not mean that good luck will continue to work.”⁴

Motor vehicle headlamps are, among other things, required to provide forward illumination for driving conditions in a manner that does not cause safety consequences for the driver of the vehicle, or other roadway drivers. In particular, this can include sources of glare caused by light reflected back to the driver or other roadway drivers.

Paragraph S10.15.6 with Table XIX of FMVSS No. 108 requires a maximum luminous intensity of 125 cd at test points within the boundaries of 10°U to 90°U and 90°L to 90°R. GM explains that in the subject vehicles, the lower beam headlamps have a reflection from the headlamp housing that is 80 degrees outboard and 45 degrees upward, which when measured has a luminous intensity of 450-470 cd that exceeds the 125 cd limit.

NHTSA concurs with GM’s argument that the operator of the noncompliant vehicle will not likely be affected as the reflection is directed outboard. However, NHTSA does not concur with GM’s argument that the narrow reflection has no effect on oncoming or surrounding vehicles due to its extreme angle. The requirement of having a maximum of 125 cd at test points 10°U to 90°U and 90°L to 90°R reduces the presence of glare and veiling glare from oncoming or surrounding vehicles. The beam of light coming from the noncompliant headlamp exceeds the photometric requirement by more than three times, and may cause glare or be distracting to surrounding vehicles. Furthermore, certain weather conditions such as snow and fog could result in light from the noncompliant lamp causing veiling glare to other motorists driving in the proximity of the vehicle having the noncompliant lamp.

³ *Morgan 3 Wheeler Limited; Denial of Petition for Decision of Inconsequential Noncompliance*, 81 FR 21663, 21666 (Apr. 12, 2016).

⁴ *United States v. Gen. Motors Corp.*, 565 F.2d 754, 759 (D.C. Cir. 1977) (finding defect poses an unreasonable risk when it “results in hazards as potentially dangerous as sudden engine fire, and where there is no dispute that at least some such hazards, in this case fires, can definitely be expected to occur in the future”).

NHTSA reviewed GM's other arguments that their products met other standards (SAE J1383 and UNECE R112) and did not find these arguments compelling because those standards are not substitutes for the requirements contained in FMVSS No. 108. Additionally, GM's explanation that the subject condition has been corrected for service parts and does not affect current-generation vehicles does not address the vehicles in the recall population and is therefore not a basis to not carry out a recall.

VII. NHTSA's Decision: In consideration of the foregoing, NHTSA has decided that GM has not met its burden of persuasion that the subject FMVSS No. 108 noncompliance is inconsequential to motor vehicle safety. Accordingly, GM's petition is hereby denied, and GM is consequently obligated to provide notification of and free remedy for that noncompliance under 49 U.S.C. 30118 and 30120.

(Authority: 49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.95 and 501.8)

Anne L. Collins,

Associate Administrator for Enforcement.

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